

DOCKET FILE COPY ORIGINAL

10  
ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

DOCKET FILE COPY DUPLICATE  
DOCKET FILE COPY ORIGINAL

RECEIVED

MAR 26 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

\_\_\_\_\_  
In the Matter of )

Implementation of Section 273 of )  
the Communications Act of 1934, )  
as amended by the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

CC Docket No. 96-254

REPLY COMMENTS OF NORTHERN TELECOM INC.

Pursuant to Section 1.429 of the Commission's rules, Northern Telecom Inc. ("Nortel") hereby replies to various comments on the Commission's Notice of Proposed Rulemaking (the "NPRM") in the above-captioned proceeding.<sup>1/</sup> Nortel filed initial comments in this proceeding. As the leading global supplier of digital telecommunications systems to businesses, government, and other institutions, Nortel believes that the Commission can best foster innovation and competition in the equipment manufacturing market by minimizing the distortions caused by unnecessary regulation. Our position has been consistent throughout this debate. BOC manufacturing is good for service providers and their customers, and for Nortel and other manufacturers because of efficiencies in

<sup>1/</sup> *Implementation of Section 273 of the Communications Act, as amended by the Telecommunications Act of 1996*, CC Docket No. 96-254, Notice of Proposed Rulemaking, FCC 96-472 (rel. Dec. 11, 1996).

No. of Copies rec'd  
List ABCDE

0414

process, the potential for cost savings, and reduced time to market for new services and products.

The Commission should implement Section 273 of the Telecommunications Act of 1996 (the "1996 Act")<sup>2/</sup> to enable the marketplace, rather than regulation, to provide the signals for the most efficient allocation of resources. This outcome is consistent with Congress' commitment in the 1996 Act to market-based competition.

Nortel is well-accustomed to competing for business with a large number of innovative and aggressive competitors. In particular, allowing the Bell Operating Companies ("BOCs") into manufacturing activities will not alter this environment. Nortel expects to win business with all carriers, including the BOCs which also manufacture telecommunications equipment, on the basis of superior offerings. Nortel recognizes that it is likely that BOCs may choose to manufacture some products that support their competitive needs, and that they may sell those products to others. Nortel nonetheless is confident that it will continue to be successful despite such activities. Continued success will be based on offering both BOCs and their prospective customers superior solutions for their equipment needs.

Some commenters, including other equipment manufacturers, express concerns that market entry by BOCs will pose risks to competition and call for unnecessary regulatory restraints on BOC activities.<sup>3/</sup> Nortel believes that such proposals will prevent full-fledged

---

<sup>2/</sup> The Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 96 (1996) (codified at 47 U.S.C. §§ 151 *et seq.*).

<sup>3/</sup> See, e.g., Comments of the Telecommunications Industry Association ("TIA Comments") at p. 5 (claiming that BOC participation in the manufacturing market poses a risk to competition); Comments of the Information Technology Industry Council ("ITIC  
(continued...)

competition in telecommunications, contrary to the 1996 Act. Such regulatory restraints would limit the benefits in innovation and network investment that competition can bring. BOC entry into manufacturing without unnecessary regulation will be a healthy development for the equipment manufacturing marketplace. Just as the 1996 Act intends to promote equal competition among all telecommunication carriers, Nortel believes that manufacturers should have the ability to work with all carriers, including the BOCs, on an equal and efficient basis. Competitive success in manufacturing equipment should be determined by innovation and delivery of value to customers.

Accordingly, the Commission should reject requests for overly burdensome restrictions on the BOCs in the name of fostering competition.<sup>4/</sup> In particular, the Commission should decline to adopt the new regulations advocated by some for information disclosure, treatment of proprietary information, collaboration with manufacturers, and procurement practices that would apply to all BOCs, not only those engaged in manufacturing.<sup>5/</sup> Nortel believes that only BOCs entering the equipment manufacturing market should be subject to any new regulations under Section 273. Attempts to impose such regulatory burdens on all BOCs, including those that elect not to become equipment manufacturers, merely seek to impede the existing commercial activities of BOCs and

---

<sup>3/</sup>(...continued)

Comments") at p. 2 (successful implementation of Section 273 requires comprehensive regulation of BOCs).

<sup>4/</sup> See, e.g., TIA Comments at p. 5; ITIC Comments at p. 4.

<sup>5/</sup> See, e.g., TIA Comments at 12-24, 46-52.

equipment providers to the detriment of competition.<sup>6/</sup> Congress did not intend the 1996 Act to be used to impose new regulatory restrictions on BOC practices in this manner.

Nortel is particularly troubled by attempts to impose new and intrusive regulations on network information disclosure and treatment of propriety information by BOCs, regardless of whether they are engaged in manufacturing activities.<sup>7/</sup> The Commission should reject requests for sweeping disclosure requirements, which would have the effect of threatening Nortel's ability to restrict access to its proprietary and confidential information. To avoid the potential consequences of such disclosure, Nortel believes that BOCs not engaged in manufacturing telecommunications equipment should only have to comply with the Commissions' disclosure requirements applicable to all carriers - *i.e.* to disclose interfaces, protocols, and technical requirements needed for manufacturers to produce products compatible with the BOCs' networks, but not detailed additional information.<sup>8/</sup> Expansive disclosure of network information and access to proprietary information will impair the ability of all equipment manufacturers to protect proprietary information.<sup>9/</sup>

The Commission should also reject requests to impose unrealistic disclosure timing constraints on BOCs not engaged in manufacturing equipment through so-called

---

<sup>6/</sup> See TIA Comments at p. 20; ITIC Comments at p. 15.

<sup>7/</sup> See, *e.g.*, TIA Comments at pp. 18-25.

<sup>8/</sup> Other commenters support this requirement as well. See ITIC Comments at pp.8-9.

<sup>9/</sup> Commenters have noted the need to protect proprietary information by non-affiliated entities and partners of BOCs. See ITIC Comments at p. 5.

"early" disclosure requirements.<sup>10/</sup> There is no need for the Commission to jettison the long-standing rules requiring disclosure at two points: (i) at the time of the "make/buy" decision; and (ii) to the public at large twelve months prior to introduction.<sup>11/</sup> Equipment manufacturers can continue to compete successfully under this framework.

The Commission should also decline to apply disclosure requirements to information regarding protocols and technical requirements provided by BOCs to any manufacturer with which they collaborate, enter into a royalty agreement, or through which they engage in manufacturing research.<sup>12/</sup> Such regulations would constitute inappropriate and anticompetitive restrictions on BOC activities, especially in light of the statutory provision explicitly providing for close collaboration in Section 273(b)(1) and for royalty arrangements in Section 273(b)(2).

Indeed, as a general matter, ordinary commercial relationships -- in telecommunications equipment manufacturing as well as in other competitive markets -- require close collaboration. As one commenter noted, a healthy competitive marketplace benefits from such collaboration, in part because the collaborating manufacturer benefits competitively from the collaboration.<sup>13/</sup>

---

<sup>10/</sup> See TIA Comments at pp. 20-21.

<sup>11/</sup> See ITIC Comments at pp. 10-12 (advocating complex "minimum" parameters for information disclosures).

<sup>12/</sup> See ITIC Comments at p. 4.

<sup>13/</sup> See Comments of Ad Hoc Coalition of Telecommunications Manufacturing Companies at pp. 3-5.

The Commission should refrain from adopting rules that would limit the close collaboration provided for in Section 273. Should the Commission accede to certain of the requests for regulatory limits on collaboration,<sup>14/</sup> the result would be to make the BOCs substantially less competitive in a fast-moving market. Without close collaboration, the BOCs would have to telegraph publicly, well in advance, the services they plan to offer, which would provide a regulation-driven advantage to their competitors. This would ultimately diminish the BOCs' incentives and ability to invest in new technologies and capacity in their networks.

Nortel believes that the Commission should implement Section 273 by focusing its attention on the legitimate competitive concerns addressed by Congress when BOCs, in fact, engage in manufacturing. The Commission should reject requests from some commenters that the Commission impose constraints on BOCs engaged in manufacturing that far exceed both what is (i) necessary for sound policy and (ii) authorized by the 1996 Act.<sup>15/</sup>

The 1996 Act properly provides that BOCs should engage in manufacturing through a separate affiliate. Implementation of that requirement should prevent, for example, a BOC from acquiring equipment from its manufacturing arm at an artificially high price, which would artificially inflate the BOC's costs but have little or no positive effect on competition. It is a statutory requirement, as a condition to entry into manufacturing, to require that BOCs satisfy the requirement in Section 273(a) that the BOC or an affiliate must

---

<sup>14/</sup> See TIA Comments at pp. 12-14.

<sup>15/</sup> See, e.g., TIA Comments at pp. 6-11.

be authorized to provide interLATA services under Section 271(d), before being allowed to manufacture equipment. This provides sufficient evidence regarding the existence of local competition to prevent BOCs from impeding competition by controlling a network that is difficult to connect to or utilize without purchasing equipment from the BOC's manufacturing affiliate. As noted above, existing network information disclosure requirements also continue to be essential.

Beyond these basic constraints on BOCs' operations, the Commission should limit additional new regulation associated with Section 273.<sup>16/</sup> Specifically, BOCs should not be limited in their procurement practices, royalty arrangements, or their ability to collaborate with third party manufacturers in the development of any equipment class if the BOC does not consider purchasing such equipment from its manufacturing affiliate. In this situation, additional regulations are unnecessary under Section 273 and would not promote the pro-competitive goals of the 1996 Act. The only result of adopting such rules would be to create market inefficiencies, hindering the development of beneficial competition.

Existing antitrust statutes and commercial law standards, together with the Commission's enforcement authority, will safeguard competition particularly with respect to collaborative arrangements with the BOCs. Limited regulatory burdens on the commercial activities of equipment manufacturers and BOCs will best protect competition.

---

<sup>16/</sup> Any such regulation should be confined to apply only to classes of equipment which a BOC's manufacturing affiliate offers for sale directly to the BOC, since such sales do raise legitimate competitive concerns.

In its initial Comments, Nortel expressed concerns with respect to industry participation in the standards developing processes led by Bellcore.<sup>17/</sup> Nortel has entered into discussions with Bellcore to address those specific procedures. Based on these initial discussions, Nortel believes that Bellcore has provided additional information and proposals, which if properly implemented, will benefit industry and will also well serve the public interest. Nortel will keep the Commission apprised of the fruits of these discussions.

In summary, Nortel supports the Commission's efforts to adopt rules under Section 273 that strengthen and enhance the innovation and competitiveness of the equipment manufacturing marketplace. Nortel believes that BOC entry into the equipment manufacturing marketplace will promote such competition and is healthy for the industry. The Commission can best support competition in this industry by adopting rules that limit BOC participation only to the extent necessary to constrain anti-competitive behavior as specifically required under Section 273. By allowing BOCs to participate without

---

<sup>17/</sup> Comments of Northern Telecom Inc. at pp. 9-10.



cumbersome regulatory burdens, the Commission will ensure the continued growth and vibrancy of the equipment manufacturing market.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stephen L. Goodman", is written over a horizontal line.

Stephen L. Goodman

William F. Maher, Jr.

David E. Colton

Halprin, Temple, Goodman & Sugrue

1100 New York Ave., N.W.

Suite 650 East

Washington, D.C. 20005

(202) 371-9100

Counsel for Northern Telecom Inc.

Of Counsel

John G. Lamb, Jr.

Northern Telecom Inc.

2100 Lakeside Boulevard

Richardson, TX 75081-1599

Dated: March 26, 1997

CERTIFICATE OF SERVICE

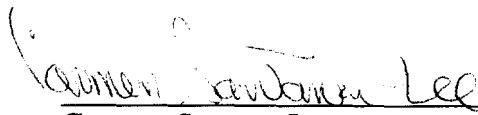
I, Carmen Santana-Lee, do hereby certify that a copy of the Reply Comments, filed on March 26, 1997, has been served by mail, unless otherwise indicated, upon the following:

Fiona J. Branton  
Director, Government Relations  
and Regulatory Counsel  
Information Technology Industry Council  
1250 Eye Street, N.W. Suite 200  
Washington, DC 20005

Colleen Boothby  
Levine, Blaszak, Block & Boothby  
1300 Connecticut Avenue, N.W.  
Suite 500  
Washington, DC 20036-1703

Matthew J. Flanigan  
President  
Telecommunications Industry  
Association  
1210 Pennsylvania Ave., N.W.  
Suite 315  
Washington, DC 20044-0407

Philip L. Verveer  
WILLKIE FARR & GALLAGHER  
Three Lafayette Center  
1155 21st Street, N.W.  
Washington, DC 20036

  
Carmen Santana-Lee